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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| JOE ABUZAID, individually and on behalf of the City and County of San Francisco,<br>Plaintiff and Appellant,<br>v.<br>PIER 39 LIMITED PARTNERSHIP,<br>Defendant and Respondent. | A122629<br><br>(San Francisco City & County Super. Ct. No. CGC-05-447971) |

Plaintiff Joe Abuzaid's first amended complaint alleged claims under the California False Claims Act (Gov. Code, § 12650 et seq.) (Act), contending that defendant Pier 39 Limited Partnership (Pier 39), which leases a large commercial space from the City and County of San Francisco (City), was fraudulently underpaying its rent to the City. The trial court granted a demurrer without leave to amend, concluding that because Abuzaid's claims were substantially the same as earlier public reports of misconduct by Pier 39 and its predecessor in interest, the court lacked subject matter jurisdiction under Government Code section 12652, subdivision (d)(3)(A). We agree and affirm.

## I. BACKGROUND

In December 2005, Abuzaid filed a complaint against Pier 39 asserting three causes of action under the Act. By statute, the complaint was placed under seal until the City had an opportunity to review the allegations and decide whether to intervene and proceed with the action. (Gov. Code, § 12652, subd. (c)(2), (6).) It was not until

March 2007 that the city attorney filed a notice declining to intervene. Pier 39 successfully demurred to this initial complaint, and Abuzaid was granted leave to amend.

Abuzaid filed a first amended complaint alleging that he is the owner of one or more businesses at a prominent 200,000-square-foot commercial complex in San Francisco, known as Pier 39 (Pier), which Pier 39 leases from the City.[1] Since the Pier was first developed in 1977, the entire complex has been leased to a master lessee, which in turn subleases space within the Pier to retail stores and other commercial ventures. The master lessee's rent is largely determined as a percentage of the rents collected from these subtenants. According to the amended complaint, from the beginning "the master lessee has viewed its obligation to file with the City regular verified reports of the rents it receives as an opportunity to hide money from the City and an opportunity to divert rents that are contractually due to the City to its own pockets instead." The amended complaint lists several methods by which the master lessee can improperly evade its rent obligations under the lease.

According to the amended complaint, the City discovered very early that the first master lessee, Pier 39's immediate predecessor, was artificially reducing its rent obligation to the City by taking a financial interest in some subtenants' businesses. The master lessee charged a low rent to these subtenants and recouped the lost rent through its interest in the businesses' profits. Because the City received only a percentage of the money paid as rent, this tactic effectively cheated the City. Upon settling a lawsuit brought by the City over this practice, the parties amended the master lease in 1979 to include a separate classification of " 'economic rent,' " which was defined as " 'income to the [master lessee] from company operated activities.' " In turn, " 'company operated activities' " were defined as any business " 'in which a ten percent . . . interest is held by [the master lessee] (or any related entity) or by any officer, director or employee of [the

[1] We will refer to the defendant, Pier 39 Limited Partnership, as "Pier 39" and to the San Francisco retail complex, Pier 39, as the "Pier."

master lessee] or members of their immediate families . . . .' " The City's share of economic rent is determined as a portion of gross sales, rather than as a portion of rent.

The original master lessee assigned the master lease to the principals of Pier 39 in 1981. The amended complaint alleges that, in subsequent years, Pier 39 and its officers and employees formed various entities for the purpose of diverting, hiding, or otherwise keeping Pier income from the City. The exact ownership of these entities is left vague by the amended complaint because it alleges the entities were owned by "Defendants," but the complaint lists no defendants other than Pier 39. Although the amended complaint contains a placeholder for Doe defendants, no other defendants were ever joined.[2]

Using these various entities, the amended complaint alleges, Pier 39 violated the master lease by misrepresenting its operations in the following ways:

(1) Pier 39 diverted income from marina operations to an affiliated entity and did not report the receipts from these operations in its annual report to the City;

(2) Pier 39 required subtenants to pay 2 percent of gross sales to an entity created to manage corporate sponsorship activities, thereby "diverting a substantial portion of what would otherwise have been rental income into underreported corporate sponsorship profits instead";

(3) Pier 39 did not report corporate sponsorship income to the City, falsely informing the City's auditor that the income had been included in the category of " 'Children's area, games, and all other unspecified uses' " but in fact omitting it altogether;

(4) Pier 39 did not truthfully report the ownership interests of its officers, employees, and affiliated entities in at least 15 specifically identified businesses at the Pier and granted these businesses lower rents, thereby evading the requirement of paying economic rent on the income of those businesses and artificially lowering the rent that was reported; and

[2] A similar ambiguity is present in Abuzaid's allegation of many of the activities described in the amended complaint, which are often attributed to unspecified "Defendants."

(5) Pier 39 granted lower rent to favored subtenants who agreed to divert a portion of their sales to Pier 39 or its officers or employees, thereby artificially reducing the rent reported to the City.

The amended complaint listed several of the current and former officers and employees of Pier 39 and their relatives who were allegedly involved in these activities and described some of their ownership interests in several Pier businesses. While Abuzaid acknowledged that some of this information was public, he claimed to have developed most of the information regarding Pier 39's allegedly fraudulent activities through independent investigation during his tenancy at the Pier and through discovery in a related lawsuit.

Based on these allegations, Abuzaid pleaded two causes of action for violation of the Act, the first alleging misrepresentations by "Defendants" in written reports to the City and the second alleging misrepresentations by "Defendants" to the auditor retained by the City to review Pier 39's operations.[3]

Pier 39 demurred to the amended complaint, arguing that the court lacked jurisdiction over the complaint under Government Code section 12652, subdivision (d)(3)(A), which precludes claims under the Act that are based on publicly available information, and that Abuzaid's allegations were insufficiently specific, among other arguments. The claim that Abuzaid's allegations were publicly known was based on (1) the allegation in the complaint that the possibility of fraud through master lessee ownership of subtenants is obvious, given the structure of the contract; (2) the 1979 lawsuit, which alleged that Pier 39's predecessor was evading rent payments on affiliated subtenants and resulted in amendment of the master lease; (3) the City's periodic audits of master lease performance, which are acknowledged in the amended complaint; (4) the similar disclosures made in a counterclaim filed in 2003 by a company owned by

[3] The master lease permits the City to audit the books and records at any time and requires the master lessee to submit audited financials to the City annually. The amended complaint notes the periodic City audits, referring to them as an exercise of "reasonable diligence" to uncover underpayment.

Abuzaid, which was the subject of an earlier decision of this court (*Pier 39 Limited Partnership v. Flags & Things Enterprises, Inc.* (June 13, 2006, A109345) [nonpub. opn.]); (5) a 1998 news article, which detailed the unusually favorable terms of the master lease, the conflict created by Pier 39 ownership of subtenants, the below-market rents paid by some Pier 39-affiliated subtenants, and the extraordinary wealth of Pier 39's principals; and (6) a 1997 agreement with the City requiring Pier 39 to report and share sponsorship revenue, which was entered into after a City audit found that Pier 39 was not reporting sponsorship revenue.

The trial court granted the demurrer without leave to amend, noting, "Let me start by saying qui tam actions are very special lawsuits. They are not like your usual civil litigation and the reason is because it allows a whistle blower to essentially take over the role of the government and to cure a social ill. [¶] And it provides . . . a very effective, useful, and appropriate tool to the other mechanisms in our society for making sure that people don't make false claims, for example, to the government. Nonetheless, because it's such a special tool, there are special requirements to make sure that the tool is used appropriately, sparingly, and not in a manner that causes the litigants, especially the defendants and the Court system, undue expense to sort things out. [¶] The first special tool is the specificity requirement. The case does not allow a generalized accusation to be followed by discovery to see if you were right or to flush out or perhaps even revise the general theme in the original action. [¶] The whistle blower has to know exactly what he, she or it is talking about, and has to be very specific. It's akin to alleging fraud, and the reason is once you start one of these things in the manner that a qui tam case allows, it's expensive, it's time-consuming, and one has to figure out whether you are on to something. [¶] The second special requirement has to do with this public information thing. . . . [B]asically the idea is if the government is already onto it or should be onto it, and has done nothing about it, then maybe there's a reason for that. [¶] . . . [¶] . . . The idea . . . is again to not have just anybody, even well intending people just be able to file lawsuits acting essentially on behalf of both the government or in the interest of the

government and the general people, and both of those fit in here in a way that makes what you were offering to do not appropriate."

The court concluded both that Abuzaid's allegations were not specific enough to satisfy the specificity requirement and that his claims were barred because the public and the City were already generally aware of Pier 39's alleged proclivity for rent evasion. As the court noted, "The object of this is to not come up with a slightly different or even a reasonably different iteration that nobody has focused on, but rather come up with something that's different from what the public has already and what the government is already working on."

Abuzaid filed a motion for reconsideration that reargued the issues decided by the trial court. In an effort to prove that his allegations were both sufficiently detailed and not based on publicly available information, Abuzaid attached a 24-page "Disclosure of Material Evidence" that he had submitted to Attorney General (who forwarded it to the City) prior to the filing of his lawsuit, as required by the Act. (Gov. Code, § 12652, subd. (c)(6).) The motion was summarily denied.

## II. DISCUSSION

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

The Act authorizes "qui tam" actions, which are defined as " 'action[s] brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.' " (*People ex rel. Allstate*

*Ins. Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 538 (*Allstate*).) Their purpose is "to supplement governmental efforts to identify and prosecute fraudulent claims made against state and local governmental entities by authorizing private parties (referred to as qui tams or relators) to bring suit on behalf of the government." (*City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109 Cal.App.4th 1668, 1677 (*Wohlner*).) The Act is modeled on the federal False Claims Act (31 U.S.C. § 3729 et seq.), which was enacted during the Lincoln administration "to strike back against the fraud of unscrupulous Civil War defense contractors." (*Allstate,* at p. 553.) The statutes relevant to Abuzaid's action provide that any person who knowingly uses "a false record or statement" to avoid or decrease a monetary obligation to pay the state or a local government is liable for treble damages, and they authorize a private party to bring an action enforcing and sharing in this penalty. (Gov. Code, §§ 12651, subd (a)(7); 12652, subds. (c)(1), (g)(3).)

The public disclosure bar, also derived from a parallel provision of the federal act, precludes lawsuits that are "based upon" generally available information: "No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by . . . [the] governing body of a political subdivision, or by the news media, unless the action is brought by the Attorney General or the prosecuting authority of a political subdivision, or the person bringing the action is an original source of the information." (Gov. Code, § 12652, subd. (d)(3)(A).) The purpose of the provision is "to bar parasitic or opportunistic qui tam actions by persons simply taking advantage of public information without contributing to or assisting in the exposure of the fraud." (*Wohlner, supra,* 109 Cal.App.4th at p. 1683.)

Under California law, there are currently two models for interpretation and application of the public disclosure bar. The first model, advocated by Abuzaid, was presented in *Wohlner.* In that case, a former consultant to the defendant solid waste company brought an action under the Act, alleging that the defendant had fraudulently overcharged the city for its services. (*Wohlner, supra,* 109 Cal.App.4th at pp. 1673–

1674.) The same defendant had previously been the subject of two other lawsuits also alleging a form of fraudulent overbilling. (*Id.* at pp. 1672–1673.) The court held that the public disclosure bar "should be applied only as necessary to preclude parasitic or opportunistic actions, but not so broadly as to undermine the Legislature's intent that relators assist in the prevention, identification, investigation, and prosecution of false claims." (*Id.* at p. 1683.)

Construing the language of the bar, the court followed *Allstate,* which had narrowly interpreted similar language in an Insurance Code provision, in finding the qui tam action to be "based upon" publicly available information only if the action alleged the same conduct that was described in the public disclosures. Applying this rule, the court found the bar inapplicable because the fraud alleged in the plaintiff's action involved a different type of solid waste disposal charge, imposed at a different time, than the prior lawsuits. (*Wohlner, supra,* 109 Cal.App.4th at p. 1684.) Rejecting the defendant's contention that the earlier lawsuit "sufficiently alerted the government to the possibility that [the defendant] might be engaging in the type of fraudulent practices at issue here" (*id.* at p. 1685), the court held, "In effect, [the defendant] contends the [earlier litigation] put the government on notice of every possible fraud in connection with [the defendant's] contract with the City. [The defendant's] approach would result in a windfall for the defendant in a qui tam action, and would impose upon the plaintiff in the initial lawsuit the heavy burden of alleging every imaginable theory at the risk of immunizing the defendant from any further liability. Such an interpretation of the public disclosure bar is broader than necessary to prevent parasitic or opportunistic suits and we reject it." (*Id.* at p. 1685.)

The second model, advocated by Pier 39, is provided in *State of California v. Pacific Bell Telephone Co.* (2006) 142 Cal.App.4th 741 (*Grayson*).[4] Despite being

[4] Despite *Grayson*'s equal status with *Wohlner* as potentially controlling authority, Abuzaid did not mention *Grayson*'s ruling on the public disclosure bar in his opening brief, although he twice cited *Grayson* for propositions unrelated to interpretation of the Act. We remind counsel that they have an ethical obligation to disclose pertinent adverse

decided three years after *Wohlner*, *Grayson* did not even discuss *Wohlner*'s interpretation of the public disclosure bar, let alone follow it. Instead, *Grayson* adopted the broader approach of the Ninth Circuit. The *Grayson* plaintiff, an attorney and telecommunications consultant, filed suit against a number of telephone companies, alleging that the unused balances on phone cards were "abandoned property" that should have been surrendered to the state. (142 Cal.App.4th at p. 747.) *Grayson* noted that "qui tam actions . . . 'present the danger of parasitic exploitation of the public coffers' by 'opportunistic plaintiffs who have no significant information to contribute of their own.' [Citation.]" (*Id.* at p. 746.) It characterized Government Code section 12652, subdivision (d)(3)(A) as "a jurisdictional bar to qui tam actions that do not assist the government in ferreting out fraud because the fraudulent allegations or transactions are already in the public domain." (142 Cal.App.4th at p. 748.) A proper qui tam plaintiff, the court noted, "must have acquired inside information that allowed him to 'sound the alarm' about undetected fraud . . . ." (*Id.* at p. 747.) "[T]he public disclosure bar 'limits *qui tam* jurisdiction to those cases in which the relator played a role in exposing a fraud of which the public was previously unaware.' " (*Id.* at p. 749.) In service of this purpose, the court adopted the Ninth Circuit's interpretation of similar language in the federal act, holding that the bar is " 'triggered whenever a plaintiff files a qui tam complaint containing allegations or describing transactions "substantially similar" to those already in the public domain so that the publicly available information is already sufficient to place the government on notice of the alleged fraud.' " (142 Cal.App.4th at p. 748.) Because, the court found, there had been considerable public discussion in the telecommunications industry, both written and oral, about the status of unused balances as abandoned property, the bar precluded the plaintiff's action. (*Id.* at pp. 750–752.)

Of these two, we find the *Grayson* approach to better serve the purposes of the Act. *Wohlner* erred in adopting the narrow interpretation of *Allstate* without taking into

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legal authority, which *Grayson* plainly is. (See, e.g., *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82–83, fn. 9.)

account the significant differences between the Act and the statute interpreted in *Allstate.* In that decision, an automobile insurance company discovered it had been a victim of fraud. Its investigation revealing the fraud had been undertaken as a result of public revelations about similar fraud on a different auto insurance company by the same defendants. The plaintiff filed suit under Insurance Code section 1871.7, which permits a qui tam action for violations of the Insurance Code's anti-fraud provisions. (*Allstate, supra,* 107 Cal.App.4th at p. 539.) The court concluded that the Insurance Code's public disclosure bar, containing language essentially identical to that in Government Code section 12652, subdivision (d)(3)(A), did not preclude the action, even though the type of fraud committed on the two companies was identical and the public disclosures about the first company inspired the plaintiff's investigation, because the original fraud was committed against a different company. For purposes of Insurance Code section 1871.7, the court held, it was enough that the plaintiff's allegations did not involve precisely the same conduct as that disclosed to the public. (*Allstate,* at p. 565.)

It is significant that the Insurance Code provision construed by *Allstate*, unlike the Act, is not intended to deter fraud on the government. Rather, Insurance Code section 1871.7 permits qui tam actions for fraud perpetrated on an *insurance company*. In other words, the qui tam plaintiff is also the direct victim of the fraud. As the *Allstate* court noted, this difference has important implications for interpretation of the public disclosure bar. "If a federal contractor's fraud on the federal government were the subject of multiple federal False Claims Act proceedings, the amount of money recovered by the government would be diminished. The federal False Claims Act prevents this scenario from occurring by barring parasitic actions. A person cannot base a federal False Claims Act lawsuit on information learned through public channels and as to which she or he made no contribution. [Citation.] . . . [¶] The purpose of section 1871.7, on the other hand, is to prevent and remedy automobile insurance fraud. Insurers, not the state government, are the direct victims of the fraud. . . . Further, section 1871.7 has been amended since it was initially extended to insurance fraud for the express purpose of *encouraging* automobile insurers to bring section 1871.7 actions. . . .

The government serves to gain both in terms of fraud prevention and financially from such actions, especially given limited investigative and prosecutorial resources available to it. Moreover, for each such successful prosecution by an insurer-relator, the government recovers more, not less, money." (*Allstate, supra*, 107 Cal.App.4th at p. 562.) Because of these differences, *Allstate* expressly cautioned that its interpretation of the public disclosure bar in Insurance Code section 1871.7 was not intended as an interpretation of the similar language in Government Code section 12652. (*Allstate*, at p. 566.)

The Ninth Circuit's approach to the public disclosure bar, adopted by *Grayson,* is better adapted to a traditional qui tam action, such as this one. That approach was applied in *U.S. ex rel. Longstaffe v. Litton Industries, Inc.* (C.D.Cal. 2003) 296 F.Supp.2d 1187 (*Longstaffe*), which addressed an action similar to Abuzaid's. In *Longstaffe,* the plaintiff, a former employee of the defendant, alleged that the defendant had fraudulently concealed payments to " 'influence peddlers' " and passed the costs to the federal government. (*Id.* at p. 1189.) The government had conducted an investigation into the same conduct some six years prior to the filing of the plaintiff's lawsuit, and there had been substantial press coverage at the time. (*Ibid.*) While recognizing that the plaintiff's complaint contained substantial detail not found in published press reports, including the identification of many people involved, the court nonetheless found it to be precluded by the public disclosure bar. In reaching this conclusion, the court applied the "substantially similar" test adopted by *Grayson,* noting that the test is "consonant with the policies underlying the [federal False Claims Act (FCA)]: 'to alert the government as early as possible to fraud that is being committed against it and to encourage insiders to come forward with such information where they would otherwise have little incentive to do so.' " (*Longstaffe*, at p. 1192.) In rejecting the plaintiff's claim, the court noted that "so long as 'the evidence and information in the possession of the United States at the time the False Claims Act suit was brought was sufficient to enable [the Government] adequately to investigate the case and to make a decision whether to prosecute,' " the public disclosure bar is triggered. (*Id.* at p. 1195.)

Discussing the plaintiff's claim that he provided greater detail than published reports and uncovered claims for which the government had not been compensated, the court held: "First, the scope of [the defendant's] allegedly improper activities was publicly disclosed. The relevant press reports suggest that [the defendant's] allegedly illegal dealings were not isolated to a couple of countries, but were wide-spread. . . . Thus, well before [the plaintiff] filed suit, there was more than suggestion in the press that the problems at Litton [the defendant] were endemic. . . . [¶] Second, the fact that 'money may be left on the table' if [the plaintiff] is not allowed to proceed is not a basis to ignore the jurisdictional limitations of the FCA. The FCA is a fundamental response to the fact that the Government does not have the resources to pursue all frauds perpetrated on the Government. But when Congress put limits on private suits through jurisdictional limitations, it necessarily knew that there would be a gap in the enforcement spectrum between claims that the Government would be able to pursue and the remaining meritorious claims, some of which a relator might be barred from pursuing because of a jurisdictional defect." (*Longstaffe, supra*, 296 F.Supp.2d at pp. 1195–1196; see similarly *U.S. ex rel. Findley v. FPC–Boron Employees' Club* (9th Cir. 1997) 105 F.3d 675 [where public report had identified rampant fraud at a specific type of club, plaintiff's identification of fraud at an individual club of that type was precluded by the public disclosure bar].)

Applying this rule to the claims asserted in the first amended complaint, we find them precluded by the public disclosure bar. Abuzaid, like the plaintiff in *Grayson*, is not a typical qui tam plaintiff. He is not an insider who acquired direct knowledge of the alleged fraud and blew the whistle. At most, he is an interested outsider who has conducted his own investigation, in part through discovery in a parallel litigation, into whether practices reported in the past are continuing. If he has uncovered any new method of fraud not mentioned in earlier reports, it is the granting of reduced rents to "favored" subtenants in return for their granting an interest in the profits of their businesses to Pier 39 or its principals—effectively a kickback in return for reduced rents. As to that type of fraud, however, his complaint fails the requirement of particular

pleading; not a single favored tenant is identified.[5] The other types of fraud are of a type substantially similar to alleged fraud already publicly discussed: the failure to report required income and the reduction of rent to subtenants owned in part or in whole by Pier 39 and its insiders.[6] While Abuzaid's complaint, like that of the plaintiff in *Longstaffe,* provides more specific information than was available publicly—for example, naming particular subtenants in which Pier 39 and its insiders allegedly have an ownership interest—its allegations are not different in type from those made earlier.

Further, Abuzaid's own complaint provides proof that the prior litigation and press reports have been "sufficient to enable [the City] adequately to investigate the case and to make a decision whether to prosecute.' " (*Longstaffe, supra,* 296 F.Supp.2d at p. 1195.) It discusses periodic audits conducted by the City into Pier 39's compliance with the contracts terms. The type of fraud alleged by Abuzaid is presumably the same type the City's audits are designed to detect, since the amended complaint mentions examples of similar fraud by Pier 39 that have been detected by the audits. In light of the City's ongoing audits, which demonstrate the City's full awareness of the possibility of fraud, it seems particularly unnecessary and inappropriate to permit Abuzaid's action to proceed. In these circumstances, it truly is a "parasitic" action.

Although Abuzaid argues at length that he was the "original source" for the public disclosures, this was plainly not the case. All of the public disclosure cited by Pier 39 occurred prior to the year 2000. It may well be, as Abuzaid argues, that he was the

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[5] Abuzaid's allegation of this practice relies on the fact that he has been approached in the past to participate in such a scheme and assumes other subtenants have also. Although he pleads that "a favored core group of tenants receives special treatment," he does not identify any favored subtenant other than those in which insiders allegedly have an *ownership* interest, rather than an interest in profits.

[6] The latter allegation—ownership by insiders—appears to turn on an issue of contract interpretation. Abuzaid alleges fraud if Pier 39 does not report 10 percent or more *collective* ownership of a subtenant by insiders, while Pier 39 takes the position that it is required to report only if a single insider owns at least 10 percent. While the language of the lease appears to favor Pier 39's interpretation, the issue is ultimately irrelevant to the public disclosure bar analysis, and we do not consider it further.

original source for some of the specific allegations in the amended complaint, but this is irrelevant under the statute. Under Government Code section 12652, subdivision (d)(3)(A), a claim that is precluded by the public disclosure bar may be brought only if the plaintiff was an original source *for the information contained in the public disclosures*. (Gov. Code, § 12652, subd. (d)(3)(B) [" 'original source' means an individual . . . whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure"].) Although Abuzaid provided evidence that he independently gathered much of the information in his complaint, he did not attempt to demonstrate that he was the source for the public disclosures relied upon by Pier 39 in invoking the public disclosure bar. California law requires evidence of the latter to preserve a claim from the public disclosure bar.

Abuzaid also contends that California does not, or should not, follow federal law on the public disclosure bar because the two differ in defining "original source." Unlike California law, federal law does not require an "original source" to have been the source of the public disclosures, and is therefore less restrictive than the Act. In effect, Abuzaid argues, California should adopt a more permissive interpretation of the public disclosure bar to offset its relatively narrow concept of "original source." We find nothing in the statute to suggest the Legislature intended such a balance when it adopted its version of the original source rule, and Abuzaid cites no legal authority to support his argument. In any event, the argument would not preserve his claims. Abuzaid suggests that the bar should not prevent a person with independent personal knowledge, who does not speak to the press, from bringing a claim under the Act after another person with the same information has spoken to the press. Whatever the proper result in that circumstance, Abuzaid's investigation was made sometime after public disclosures alerted the City to the possibility of fraud by Pier 39.

We further find no abuse of discretion in the trial court's denial of leave to amend or of the motion for reconsideration. As to the motion, Abuzaid was required to provide "new or different facts, circumstances, or law" and a satisfactory explanation for the failure to produce any new evidence at an earlier time. (Code Civ. Proc., § 1008,

subd. (a); *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 724.) The motion for reconsideration provided no new law, but merely reasserted earlier arguments, and the "Disclosure of Material Evidence" included as a source of new facts predated Pier 39's demurrer by at least two years. The fact that Abuzaid wished to preserve the attorney work product privilege with respect to the disclosure of material evidence did not excuse his failure to include any facts found in the document in the amended complaint. Moreover, nothing in the disclosure of material evidence was sufficiently different from the allegations of the amended complaint to justify granting leave to amend.

Because we find Abuzaid's claims are barred by Government Code section 12652, subdivision (d)(3)(A), we need not consider Pier 39's contentions that the claims were not pleaded with sufficient particularity and are barred by the statute of limitations.

## III. DISPOSITION

The judgment of the trial court is affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Graham, J.*

* Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.